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**IN THE
COURT OF APPEALS OF INDIANA**

RAYMOND THOMPSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0607-CR-289

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0404-MR-4

March 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Raymond Thompson appeals his consecutive sentences for Voluntary Manslaughter, a Class A felony¹ and Felony Murder.² We affirm.

Issue

Thompson raises one issue on appeal, which we restate as: Whether the trial court abused its discretion in ordering his sentences to be served consecutively.

Facts and Procedural History

On December 19, 2003, Thompson watched Brenda Gaboian retrieve cash from a currency exchange. He followed Gaboian to her driveway, struggling with her as he attempted to take her purse. Thompson shot her in the neck, and she later died.

Thompson was arrested for killing Gaboian on April 1, 2004. The next day, the State charged Thompson with Felony Murder and Robbery. Pursuant to a Stipulated Plea and Agreement (“Agreement”), the State amended its Information to charge only Voluntary Manslaughter. Thompson pled guilty to that charge. The Agreement provided that the parties were “free to fully argue their respective positions as to the sentence.” Appendix at 49.

Meanwhile, in an unrelated matter, a jury found Thompson guilty for the Murder of Mohamed Osman. On June 13, 2005, Thompson received an enhanced sentence of sixty years imprisonment for this conviction.

¹ Voluntary Manslaughter is a Class A felony if committed by means of a deadly weapon. Ind. Code § 35-42-1-3(a).

² I.C. § 35-42-1-1.

On May 30, 2006, the trial court sentenced Thompson for the death of Gaboian. The trial court found aggravating circumstances in Thompson's history of criminal behavior, his stalking Gaboian, his character, and his violation of probation, and found mitigating circumstances in Thompson's youth and his guilty plea. Further, the trial court found that the aggravating circumstances outweighed the mitigating circumstances, and that each aggravator, standing alone, outweighed any specific mitigator. The trial court sentenced Thompson to an enhanced sentence of forty years imprisonment, and ordered as follows:

Said sentence is to be served consecutive to the sentence imposed [for the murder of Osman] for the reason that it is discretionary and is being imposed because the court believes this is an episode of criminal conduct that is closely related in time and place and circumstance, and that justice requires the taking of Ms. Gaboian's life to have some penalty as well.

App. at 53 (emphasis added). Thompson now appeals.

Discussion and Decision

On appeal, Thompson argues that the trial court erred in ordering his sentences to be served consecutively. Specifically, he asserts that the trial court's findings were inadequate to support or permit meaningful review of the trial court's decision to order consecutive sentences.³

The trial court "shall determine whether terms of imprisonment shall be served concurrently or consecutively." Ind. Code § 35-50-1-2(c). In making this determination, the trial court may consider aggravating and mitigating circumstances. Id. The trial court may

³ We note that I.C. § 35-50-1-2(d) mandates consecutive sentencing in some cases. However, the subsection is inapplicable here because it applies "(i)f, after being arrested for one (1) crime, a person commits another crime." Thompson was arrested on the same date for charges related to the deaths of Gaboian and Osman.

order consecutive sentences “even if the sentences are not imposed at the same time.” Id.

Sentencing decisions rest within the sound discretion of the trial court, “[w]ithin the applicable statutory and constitutional parameters.” Childress v. State, 848 N.E.2d 1073, 1078 (Ind. 2006) (quoting Harrison v. State, 699 N.E.2d 645, 650 (Ind. 1998)). To impose consecutive sentences, the trial court must find at least one aggravating circumstance. Marcum v. State, 725 N.E.2d 852, 864 (Ind. 2000). “[E]ven if an aggravator is not found beyond a reasonable doubt, . . . the aggravator may still be used to impose consecutive sentences.” Neff v. State, 849 N.E.2d 556, 562 (Ind. 2006). Where crimes are committed against two victims, “consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person.” Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003) (upholding consecutive sentences for twenty-six crimes against same victim) (citing Tobar v. State, 740 N.E.2d 106 (Ind. 2000) (in which defendant received consecutive sentences for three murders)).

Here, there is no dispute that Thompson was convicted of separate crimes resulting in two deaths.⁴ The trial court found four aggravating circumstances, including criminal history and stalking the victim. The trial court found that each aggravating circumstance, standing alone, outweighed any specific mitigator. Further, the trial court made clear orally and in its written order that concurrent sentences would fail to acknowledge Gaboian’s death. In light of our Supreme Court’s decision in Serino, we conclude that the trial court did not abuse its discretion in ordering Thompson to serve consecutive sentences. See also Bryant v. State,

841 N.E.2d 1154, 1158 (Ind. 2006) (“We conclude that the simple fact of a criminal history, when taken into consideration with a factor that demonstrates some increased degree of culpability such as lying in wait, is sufficient to support the decision to impose consecutive sentences.”)

Conclusion

Thompson killed two people. The trial court did not abuse its discretion in imposing consecutive sentences for these crimes.

Affirmed.

VAIDIK, J., and BARNES, J., concur.

⁴ The trial court concluded that “this is an episode of criminal conduct that is closely related in time and place and circumstance” Appendix at 53. That is not relevant, however, because both convictions were “crimes of violence.” See I.C. § 35-50-1-2(a)-(c).